IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

MFA.No. 470 of 2001(B)

WCC.68/1995 OF WORKMENS COMPENSATION COURT, THIRUVANANTHAPURAM.
.....

APPELLANT/2ND OPPOSITE PARTY:

THE DIVISIONAL MANAGER,
NATIONAL INSURANCE CO. LTD.,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.JAYASANKAR.

RESPONDENT/APPLICANT AND 1ST OPPOSITE PARTY:
----

1. **M. SANTHA, T.C. 25/287, VAYALNIKATHIYA PUTHEN VEEDU, THAMPANOOR, TRIVANDRUM.**

2. **THE COMMISSIONER, CORPORATION OF THIRUVANANTHAPURAM.**

BY ADV. SRI.N.NANDAKUMARA MENON,SC,TVM CORPN.,
SRI.GOPAKUMAR R.THALIYAL.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/05/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 1139/2002 IN M.F.A. NO. 470/2001-B

DISMISSED

SD/- J.B.KOSHY, JUDGE.

24/05/2007. **SD/- K.P.BALACHANDRAN, JUDGE.**

//TRUE COPY//

prv.

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 470 of 2001

Dated this the 24th day of May, 2007

Judgment

Koshy, J.

First respondent filed an application under section 22 of the Workmen's Compensation Act alleging that her husband V. Sreekantan employed by the second respondent sustained personal injuries while driving a tiller KLV 6018 on 8.3.1988 at about 7.30 a.m. Her further case is that he died on 26.6.1994 consequent to the injuries sustained by him on 8.3.1988. He was aged 32 years and his monthly income claimed was Rs.1,046/-. The claim was for Rs.1,01,925/-. It was contended by the appellant insurance company that the application is barred by limitation. The claim ought to have been filed within two years from the date of the alleged accident. Accident occurred on 8.3.1988. Application was filed only in 1995 after seven years of the alleged accident. Secondly it was contended that death of the husband of the first respondent has no connection with the employment or alleged accident. Since no notice of accident was given in time, company officers were unable

to verify also. Commissioner for Workmen's Compensation rejected both contention and came to the conclusion that death was due to the injuries in the accident and hence awarded compensation for death.

2. With regard to the question of time bar on going through the file it is seen that Commissioner has condoned the delay. Occurrence of the accident also cannot be disputed in view of the documentary evidence. Ext.A1 issued by the Medical College Hospital, Thiruvananthapuram reads as follows:

> "This is to certify that Mr.C.Sreekantan, 32 years, of Corporation of Trivandrum was treated for C.S.O.M. (Lt) following alleged R.T.A. He was admitted for mastoidectomy (Lt) on 3.5.1988. He was admitted in the hospital for seven days. He has bilateral S.N.H. Loss left more than that of right. His total permanent disability is 35%. Because his pre and post operator audiogram shows following values:
>
> | | | | | | | |
> |---|---|---|---|---|---|---|
> | Rt | AL | 35 | 35 | 40 | 45 | 45 |
> | BC | | 20 | 15 | 20 | 15 | 15 |
> | LL | AL | 90 | 100 | 100 | 15 | 15 |
> | BL | | 90 | 100 | 100 | 15 | 15" |

Exts.A5 to A9 show that he was continuously under treatment for heart trouble. Ext.A7 reads as follows:

> "Your patient Sree Kadan was seen in our department. He has got C.S.O.M. Tubo tympanic type on the left side - Post OP mastoidectomy which does not need any treatment. Audiogram shows left sensorineural hearing loss. For the activity of the disease on the left side he has been advised Cap. Cephalexine, Tab. Bromhexine, Tab. Actifed and Norflox ear drops with usual precautions to follow.
>
> Right ear is normal. Hence there is no need for a hearing aid. We have explained this to the patient."

Ext.A4 proceedings of the Trivandrum Corporation shows that he died on 26.7.1994 while in service. Medical records leading to his death or any treatment details after 1992 were not produced. No doctor was examined. There is no evidence to show that the accident or injury caused by the accident has got any connection with his death. Ext.D2 shows that he died of 'cardiac arrest'. It is true that evidence of AW1 and pleadings of both parties show that the deceased was a workman employed by the second respondent Trivandrum Corporation and while he was working as the driver of Tiller owned by the second respondent, he met with an accident by which he suffered hearing loss of one ear and doctor assessed 35%

disability, but, there is no evidence to show that it has got any connection with his death due to cardiac arrest occurred after more than six years of the accident. There is no case that stress or strain of the employment caused his death. Commissioner held as follows:

> "In this case, there is no inquest report being the death of Sri.Sreekantan to prove the cause of his death. Otherwise a medical officer had to confirm the cause of the death of Sreekantan. In the absence of such a medical examination report I hold that the accident occurred to Sri.Sreekantan on 8.3.1988 out of and in the course of his employment with the 1st opposite party had lead to affect the interior parts of his head which resulted in his death on 26.6.1994. This issue is decided accordingly."

We are of the opinion that Commissioner was not correct with the above reasoning. Initial burden is on the applicant to show that death was arising out of employment or death has got at least a casual connection with the employment. Here, death was due to natural cause - cardiac arrest - and there is no evidence to show that it has got even a casual connection with the employment or injury caused in the accident occurred six

years prior to his death. In this connection, we refer to the decision of the Apex Court in Jyothi Ademma v. Plant Engineer, Nellore and another (AIR 2006 SC 2830). Here, death has no connection with employment or employment injury. Hence, award of compensation for death cannot be granted. But, as already noted that he met with an accident on 8.3.1988 during the course of employment and he suffered injuries and as a result he lost complete hearing power of one ear and qualified medical practitioner certified that there is 35% disability (Ext.A1) and considering his age the relevant factor is 203.85. Even though he was drawing more than Rs.1,000/- during the date of accident maximum earnings that can be taken for calculation of compensation is Rs.1,000/-. Hence, compensation payable will be Rs.1000 x $\frac{50}{100}$ x 203.85 x $\frac{35}{100}$ = Rs.35,673.75 rounded to Rs.35,674/-. In view of the fact that there was much delay in filing the application, his dependents are entitled to interest at the rate of 6% only from the date of application, that is, 23.1.1995, till the date of deposit of the compensation, that is, 9.3.2001. Claimant/wife of the deceased is allowed to withdraw

Rs.25,000/- from the amount deposited by the insurance company. Balance amount due to the dependent shall be disbursed after deducting the amount, if any, already disbursed. Excess amount deposited shall be refunded to the appellant forthwith.

Appeal allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.470/2001

JUDGMENT

Dated:24th May, 2007